STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HOLLEY/ADRIGOUE, Minors.

UNPUBLISHED
December 17, 2013

No. 315133
Wayne Circuit Court
Family Division
LC No. 08-478651-NA

Before: K. F. KELLY, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Respondent[1] appeals as of right the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(*ii*) (parent has deserted child for 91 or more days), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to parent).[2] We affirm.

I. FACTUAL BACKGROUND

The minor child was removed from his mother's care shortly after birth. Petitioner alleged that the minor was born with a sexually transmitted disease (STD) and while the mother knew she had an STD, she had refused treatment. The minor's mother also had unstable housing and a documented history with Child Protective Services (CPS) regarding her other children. The father of the child was unknown at this point. Following a hearing on August 25, 2009, the trial court authorized the petition to be filed. The mother informed the court that she knew neither the full name nor location of the minor's father.

Although respondent was later identified as the minor's father, he was in jail because of immigration issues. At a dispositional review hearing on September 23, 2010, respondent was

[1] Because only respondent father of one child is appealing, he will be referred to as "respondent."

[2] The trial court's order also lists MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), which appears to apply to the other individuals not appealing in this case.

represented but not present, as he remained incarcerated. However, at the dispositional review hearing on December 8, 2010, respondent was present via speakerphone. He testified that deportation was a possibility and that he had never lived with the minor child. At a dispositional review hearing on March 10, 2011, the foster care case manager attested that he would ensure respondent received a parent-agency agreement and services.

The proceedings slowly progressed through the lower court. While the minor child and his sister were briefly returned to their mother's care in May of 2011, she returned the children to their former foster care home in November of 2011, claiming that she was overwhelmed. At a dispositional review hearing on February 8, 2012, respondent's attorney informed the court that respondent had been deported to the Ivory Coast. His attorney also informed the court that respondent wished to continue to participate in a treatment plan and still desired reunification.

However, following a dispositional review hearing on July 10, 2012, the trial court ordered petitioner to initiate termination proceedings because insufficient progress had been made, especially considering the minor's age. At the termination hearing, the foster care case manager testified that respondent had visited the minor child once in December 2011. She testified that respondent had a treatment plan but was unable to complete it because he was deported. She further testified that respondent had not planned for the minor's care and had not provided any financial support for the minor. She also testified that the minor was in a stable foster home with his sister, and the foster mother was willing to adopt both children.

Respondent's fiancée testified that respondent was the father of her six-month-old baby. She further claimed that she was filing a fiancée petition and a hardship waiver in an attempt to bring respondent back to the United States. She also testified that she had accompanied respondent the two times he had visited the minor, before respondent was deported.

The court found that the statutory grounds for termination, MCL 712A.19b(3)(a)(*ii*) (parent has deserted child for 91 or more days), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to parent), had been proven by clear and convincing evidence. The court found that the minor needed permanency and stability, and termination was therefore in the child's best interest, MCL 712A.19b(5). Respondent now appeals.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondent first argues that none of the statutory grounds for termination were proven by clear and convincing evidence. This Court reviews "for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation marks, brackets, and citation omitted).

B. ANALYSIS

"To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Because the trial court need only find one statutory ground for termination, reversal is warranted only when the trial court erred in its findings regarding all cited statutory grounds. *Id.*

In the instant matter, the trial court found that petitioner had proven by clear and convincing evidence the existence of MCL 712A.19b(3)(g), which allows termination when: "The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." This ruling was not in error.

Respondent had never provided the minor with a home or financial support. His relationship with the minor child was likewise limited. Even during the instant proceedings, respondent only visited the minor, at most, twice. When respondent was not being detained for issues relating to his illegal immigration status, he made virtually no effort to see the child. Further, respondent was often out of contact with petitioner or unable to be located. Although respondent expressed concern for the minor child and a desire to care for him, MCL 712A.19b(3)(g) specifically provides that a respondent's intentions are not relevant in the trial court's decision. Rather, it is respondent's behavior in not making any effort when he was released to care for the minor child, develop a relationship with him, or plan for his future that supports the trial court's findings.

Further, the trial court did not err in finding that there was not a reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the minor's age. MCL 712A.19b(3)(g). Respondent was deported to the Ivory Coast. At the time of the termination hearing, he had been living outside of the United States for almost a year, and his status had not changed. While his fiancée claimed that she was filing a petition in hopes of respondent returning to the United States, there was no evidence that she had filed the petition or that it would be granted. Moreover, the issue was not whether respondent would ever be able to provide proper care and custody of the minor, but whether there was a reasonable expectation of him doing so within a reasonable time considering the child's age, which was three years old. Given the lack of relationship respondent had with the minor, the minor's age, and the improbability of respondent returning to the United States, we find that the trial court did not clearly err in concluding that MCL 712A.19b(3)(g) was proven by clear and convincing evidence.[3]

[3] Because the trial court properly found the statutory grounds of MCL 712A.19b(3)(g) were proven by clear and convincing evidence, we decline to address the alternate grounds for termination. *In re Ellis*, 294 Mich App at 32.

III. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent also contends that termination of his parental rights was not in the minor's best interests. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error the trial court's decision that termination of parental rights was in the child's best interests. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

B. ANALYSIS

"In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent," and "the child's need for permanency, stability, and finality[.]" *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). In the instant case, the lower court found that termination was in the child's best interest because he needed permanency, consistency, and a home where he was nurtured and loved. Respondent could not provide these to the minor child. Not only had respondent been deported to the Ivory Coast, but even when he was in Michigan, he visited the minor at the most two times during these proceedings. As the trial court acknowledged, the uncertainty of respondent's fiancée filing a petition or succeeding in her efforts did not provide the minor with the much needed stability and permanency. Moreover, the minor had found stability with the same foster home he had been in with his sister since birth, except for the brief period in 2011 when they were returned to their mother's care. The foster mother also was willing to adopt both children.

While respondent contends that the trial court should have considered placing the minor with respondent's fiancée in a fictive kin relationship, he has provided no support for the proposition that the trial court was required to consider placing the minor with an unrelated adult. The minor has never lived with this woman nor was she a relative as defined in MCL 712A.13a(j).[4] In fact, the record establishes only that the minor met this woman twice. While respondent contends that the trial court's decision deprived the minor of associating with his other sibling or learning about his cultural background, the trial court did not clearly err in weighing the minor's need for security and permanency against such considerations.

[4] "'Relative' means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce." MCL 712A.13a(j).

Therefore, we find that the trial court did not clearly err in concluding that terminating respondent's parental rights was in the minor child's best interests as the minor had lived in the same foster home for most of his life and was in acute need of permanency and stability.[5]

IV. CONCLUSION

The trial court properly found that the statutory ground for termination, MCL 712A.19b(3)(g), had been proven by clear and convincing evidence and that termination was in the minor's best interest. We affirm.

/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray
/s/ Michael J. Riordan

[5] Now on appeal, the guardian ad litem contends that termination was improper and respondent's due process rights were violated as he was deprived of communication and services. These arguments are directly contrary to the GAL's position in the lower court, namely, that termination was warranted. "[A] party may not successfully obtain appellate relief on the basis of a position contrary to that which the party advanced in the lower court." *In re Leete Estate*, 290 Mich App 647, 655; 803 NW2d 889 (2010). Moreover, these arguments overlook testimony that respondent had a treatment plan, he only visited the minor twice, and he infrequently responded to petitioner's attempts to contact him. As this Court has stated, "there exists a commensurate responsibility on the part of respondent[] to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). The guardian ad litem also fails to specify what other services, in light of respondent's deportation, petitioner could possibly offer that would facilitate reunification. See e.g., *In re Fried*, 266 Mich App at 541-543 (petitioner's decision not to recommend certain services was reasonable when such services would be unproductive).